question is whether the motive was not really to steal some Defence secrets as such.

Secondly, do you consider three incidents in a year to be a large number or a small number? Do they really promot you to further strengthen the security

SHRI MALLIKARJUN: Sir, it is not a question of the number being large or small. An incident is an incident which ought to be checked up. Always it has been the constant effort of the esablishment to see that the security at the Defence establishments and installations is made more effective, and for that often guidelines are being issued and training etc. is being given.

Letter to MPs on the issue of Electoral Reforms Bill

*267. SHRI H. HANUMANTHAPPA: Will the PRIME MINISTER be pleased to state:

(a) whether Government's attention has been drawn to the news-item appearing in "The Times of India" oof 10th June, 1994 to the effect that Shri H. D. Shourie, Director of the Common Cause, had written a letter to Members of Parliament on the issue of Electoral Reforms Bill, recently;

(b) whether Government are aware of the contents thereof; and

(c) if so, what is Government's reaction thereto?

THE MINISTER OF STATE IN THE MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS (SHRI H. R. BHARDWAJ): (a) Yes, Sir.

(b) and (c) It has been *inter-alia* stated in the letter that the then proposed move to amend the Constitution to provide for transaction of business of the Commission by consensus and failing which by majority would be tantamount to altering the basic character of the constitution and would create an impression amongst people that it is being done to clip the wings of the Chief Election Commissioner. The Government does not agree with this view.

SHRI H. HANUMANTHAPPA: What is the present position of the Commision? Is it functioning as a single-member Commission or a multi-member Commission? How is it functioning as on today?

SHRI H. R. BHARDWAJ: I would like to bring to the notice of the House that pursuant to the demand of the entire Opposition, the Government agreed to make it a multi-member Commission. Two Members were added. Thereafter, this House and the other House were pleased to pass a law relating to the conditions of service of the Chief Election Commissioner and the Election Commissioners. After that law was made, it was challenged, and the Supreme Court is seized of the matter. The law was challenged by the Chief Election Commissioner himself. So, that is the position with regard to the implementation of the earlier law.

So far as this Constitutional amendment which is the subject-matter of Mr. Shourie's letter is concened, we had many rounds of discussion with the Opposition, but, when we found that some sort of misunderstanding about our intention was being created, we did not introduce that Bill. We want to bring about a consensus. There is no question of clipping anybody's power because it is a question of an institution which we respect more than anybody else. We would like to strengthen it in whatever manner on which we could all agree, and we can do better in the holding of elections in the country. Therefore, I would like to repel in the strongest terms this misunderstanding that anybody is interested in clipping the wings of Mr. Seshan or any other Commissioner. We are going to go through consensus only. Whatever Government does, it does by consensus.

[Shri H. R. Bhardwaj]

We brought legislations. One was the Bill on politice and religion. A Joint Committee of both Houses decided to do it, and we introduced that measure. Then, we had some portion of the Dinesh Goswami Committee Report which was a unanimous recommendation. We agreed with that portion. We introduced that Bill in Parliament. It is pending before this Committee.

So far as this area of controversy is concerned, it has been created, and it is not in good taste. When we talk of an institution, we should keep it beyond controversy, and Government has the sincerest intention on this issue.

SHRI H. HANUMANTHAPPA: The Minister, in his reply, has said that a number of political parties were consulted and that, according to their opinion, the multi-member Commission was formed. Will the Minister mention all the parties which agreed with the multi-membership but withdrew the view later? They have created this problem. Would you kindly tell us which the parties are which agreed first for this and later on turned around?

SHRI H. R. BHARDWAJ: Sir, there is a complete unanimity on a multi-member commission. There is no party which is opposing it. I have been answering this question for many years. The latest position is also that every party wants a multi-member Commission, but I do not know why some of them make a controversy on the method of appointment. Somebody says the power of the Election Commission should be less, somebody says it should be more. Some say they should not be equal in status. Somebody asked why we had brought these two Commissioners equal to that. The question is when you want a multi-member commission, the two Election Commissioners, who are appointed, how they are going to function. We have debated this issue in various meetings and we have apprised the hon. Members from the Opposition that we would not be acting with any prejudice against anybody, we will strictly go by the Supreme Court verdict in Dhanoa's case. Earlier also two members were appointed and there was a controversy and the Supreme Court went into it. We kept the Supreme Court's view on this. You kindly permit me, I will briefly read that portion so that the hon. Member is clear why we brought those measures. I am reading from AIR 1990-91, Supreme Court 1/45, paragraph.

> "There is no doubt that two heads are better than one. Particularly when and institition like the Election is entrusted with vital functions and is armed with exclusive uncontrolled powers to execute them, it is both necessary and desirable that powers are not exercised by one individual, howsoever wise he may be. It will conforms to the tenets of the democratic rule. It is true that the independence of an institution depends upon the persons who man it and not on their number. A single individual may sometimes prove capable withstanding all pulls and pressures which others may not. Hodever, when vast powers are execised by an institution, which is accountable to none, it is better to entrust its affairs to more heads than to one. It helps to ensure judiciousness and want to arbitrariness. This fact, however, remains that when more individuals than one, man an institution, their roles have to be clearly defined, if the functioning of the institution is not to come to a naught.

Therefore, Sir, if the roles have to be defined, they are not to be defined anywhere except in law. We have to define their role because the institution has to work by consensus. Suppose human beings as they are, they do not reach a consensus, then in a democratic set up, the other method is by majority. If we provide this provision in the

law and the House passes it, I do not think why anybody should have a grievance. But even then these doubts were expressed and we are congnisant of it. We would not like to create any controversy. We want the Election Commission to do its work and we will extend all cooperation to the Election Commission as is constituted today, a multi-member Commission.

श्री अजीत जोगी (मध्य प्रदेश) : सभापति महोदय, आज सदन में जो पंक्तियां खाली हैं, उन्हीं में बैठने वाले हमारे विद्वान साथियों की पहल पर पिछले सत्र में एक संविधान का संशोधन और बिल प्रस्तुत करने की बात हुई थी पर उनका रुख बदलने के कारण वह दोनों चीजें पारित नहीं हो सकीं। इसलिये मैं आपके माध्यम से मंत्री महोदय से यह जानना चाहूंगा कि उसके बाद से आज तक क्या विपक्ष के उन साथियों से मंत्री महोदय की चर्चा हुई है और अगर हुई है तो उनका क्या रुख है ? क्या वह अपनी हठधर्मिता छोड़ने को तैयार हैं और फिर से यह चाहते हैं कि चुनाव की प्रक्रिया में, चुनाव के कानून में, नियम में सुधार हो ? अभी तक क्या प्रगति हुई है, कृपया यह बताने का कष्ट करें और साथ ही यह भी बतायें कि यदि वह सहमत नहीं होते हैं और संविधान का संशोधन पारित नहीं हो सकता है तो क्या कम से कम जो बिल बनाया गया है, उसको पारित करने की कोशिश की जा रही है ?

श्री हंसराज भारद्वाज : आदरणीय सभापति जी, जहां तक चुनाव सुधार का संबंध है, हमारी सरकार निरन्तर प्रतिदिन इस पर विचार कर रही है कि कितनी जल्दी हम इन सुधारों को ला सकें ताकि सही चुनाव हो सकें, सस्ते चुनाव हो सकें, उन पर मनी पावर और मसल पावर का प्रभाव न हो । कांस्टीट्यूशन अमेंडमेंट, माननीय सदस्य जानते हैं, हम लाना चाहते थे लेकिन वह हमारी दो तिहाई मेजोरिटी न होने के कारण हम प्रतिपक्ष को साथ लिये बगैर पास नहीं कर पाते। हम चाहते हैं कि जिस समय भी अपोजिशन के लीडर्स इस बात पर पुनर्विचार करना चाहते हैं तो हम उनके साथ बैठक विचार करने को तैयार हैं ।

दूसरा जो मुद्दा था रिप्रजन्टेशन आफ दि पीपुल एक्ट का, आप को मालूम है स्टैंडिंग कमेटी इस हाउस की मेरे मंत्रालय के संबंध में विचार कर रही है और ज्यों ही वहां से वह बिल वापस आ जायेगा, हम उसको पार्लियामेंट में पास करायेंगे ।

एक और नया मुद्दा था जो कांस्टीट्यूशनल बिल में था डिलिमिटेशन का वह मैंने कंडीशंस आफ सर्विस के मुद्दे से अलग करके नया प्रस्ताव अपने मंत्रि मंडल से पास करवाया है और मैं समझता हूं कि एक या दो दिन में हम उसे हाउस में इंट्रोड्यूस कर देंगे । तो हम निरन्तर इस बात पर अग्रसर हो रहे हैं कि किस प्रकार हम चुनाव सुधारों को जल्दी से जल्दी लागू कर सकें और यह हमारी सरकार की इच्छा है कि उसमें हम सभी दलों का चाहे वह कोई भी मत रखते हों, हर समय विचार और सहयोग लेना चाहेंगे ।

SHRI V. KISHORE CHANDRA S. DEO: Mr. Chairman, Sir, I do not know whether the hon. Law Minister is aware of the fact that there is a provision for appointing more than one Election Commissioner. He has referred to the Dinesh Goswami Committee recommendations. This Committee has recommended a multi-member commission. Obviously, it implies that all would have equal powers. But it was not a question of giving them the same powers, it was a question of recommending a multi-member commission. So, the Government can nominate Election Commissioners which they have done earlier. Now, we have also two other Election Commissioners. The same Committee in its report have also stated that their salaries, perquisites and other facilities and powers will be on the same analogy of those of the Judges of the Supreme Court. So, the Judges of the Supreme Court have equal

[Shri V. Kishore Chandra S. Deo]

powers. As we all know that the Supreme Court functions on a majority principle. Democracy is a basic structure and a part of the Constitution. The Election Commission, the apex body is responsible for the flow of democratic process in this country. So, when all the political parties have unanimously agreed on and recommended a multi-member Commission, this also implies that the powers should be equal. is the hon. Minister aware of any other fact which made these political parties retract from their original stand? This is number one.

Number two the hon. Law Minister has made a reference to the judgment of the Supreme Court. This forms a part of the basic structure of the Constitution. Certain things have been mentioned under different clauses of article 324, but clause (2) of article 324 clearly says that all the conditions that are there in article 324 are subject to any enactment or legislation made by Praliament. If you go through the debates of the Constituent Assembly, it is very, very clear that clause (2) of article 324 was added by the Constituent Assembly. They have called it as an "Instrument of Instructions to the Parliament" to enact proper legislation according to the experience that we gain in the coming years. Where does the question arise of any such legislation while we are violating the basic structure of the onstitution? Will the hon. Minister please clarify this point?

SHRI H. R. BHARDWAJ: Mr. Chairman, Sir, the mandate of article 324 is very clear. So far as the matter of election is concerned, the Election Commission is charged with the duty. It is an independent institution. No other institution is entitled to hold elections. The supervision, control and superintendence over elections vests with the Election Commission. There is no doubt about it. So far as the multi-member commission is concerned, it has been given in the beginning of article 324 itself. And that could be done without any legislation or any amendment to the Constitution. That was done. Now the question is about the functioning of and the allocation of business to the members of the Election Commission. We want to put it beyond question that the members who owe their duties as the Election Commissioners should function in the defined area. And that allocation of business was done in the past. But, unfortunately, it was challenged And that is a matter which is *sub judice*.

So far as the controversy is concerned, so far as our discussion with the Opposition is concerned, I do not impute any motive to any political party because if all the political parties think alike, there can be no Opposition party. As you know very well, not only on this issue but on many other issues also, they have differences of opinion. If they are themselves convinced that they are wrong but are insisting on the wrong thing, it is their fault and not our fault.

SHRI P. UPENDRA: Sir, the Minister has mentioned that a Constitution Amendment Bill relating to delimitation of constituencies is being drafted and will be introduced in Parliament soon. I do not know how we can get it through because this House requires at least 123 Members to get it passed. Anyhow, they can introduce that. Apart from the powers of the Election Commission and the delimitation, there are a number of items on the electoral reforms agenda. There was agreement on a number of items. There was some minor disagreement on some issues. All along it had been pleaded that wherever there was maximum agreement, that should be included in the Bill and the Bill should be brought in. I do not blame the Government for not getting the Bill passed. Because of the attitude of the Opposition in the special Session, it could not be passed. What I want to know is this. There are a number of items, which are not included in the R P. Amendment Bill, where there are minor differences but agreement could be reached. Will the Minister and the Prime Minister take the initiative to

consult all the parties during the inter-Session period? Of course, the atmosphere today is not congenial to it. But after some days, the dialogue could be continued and some more agreement can be reached on the other items and they can also be included in the present Bill which is before the tanding Committee. Or a new Bill also can be brought in and both can be passed together. Will the Prime Minister or the Minister take the initiative to continue the dialogue with the other parties?

SHRI H. R. BHARDWAJ: Sir, I deeply appreciate and respect the views expressed by the hon. Member. This is a matter where we would like to have a continuous discussion with all the political parties. I am prepared to take the initiative at any time on any issue which is pending. Whatever has been sent to the Standing Committee is under consideration. I am informed that the hon. Chairman of the Committee has already invited views from hon. Members of both the Houses of Parliament. Even pending matters can be discussed. I want to assure the House categorically that on any matter which reforms the election law, the Government would be the first to come forward and help the country. That is my commitment.

SHRI MADAN BHATIA: Sir, to my mind, the independence of the highest Constitutional authorities like the Judges, and the Election Commission, in this case, is ensured not by the mode of appointment, but by the security of tenure, and that means the mode of removal. When we framed the Constitution, for instance, the Constitution vested in the Executive, of course, in consultation with the Chief Justice of the High Court or the Chief Justice of India, the power to appoint the Members of the highest Judiciary of the land. But in order to ensure the independence of the Judiciary, the Constitution provided that the members of the highest Judiciary, the Judges, could be removed only by means of impeachment. I believe, Sir, that in the proposed Constitution Amendment, the Government has suggested and has provided that so far as the other Election Commissioners are concerned, when it becomes a multi-member election body, they will also be removed, they will also be liable to be removed in the same way as the Chief Election Commissioner, namely, by means of impeachment. In my opinion, that would have ensured total independence of the other Election Commissioners also. So ar as the mode of appointment is concerned, in regard to that, I believe that the Government had suggested the same mode of appointment as in the case of the highest judiciary, namely, they will be appointed in consultation with the Chief Justice of India. If that is so, will the hon. Minister enlighten the House whether in the opinion of the Government and taking into consideration the prevailing conventions in all the democracies of the world, this would not have ensured the independence of the Chief Election Commissioner as also of the other Election Commissioners?

Secondly, I would like to ask, if we say that the other Members of the Election Commission shall be appointed in consultation with the Chief Justice of India, is there not the possibility that the words "in consultation with the Chief Justice of India may be interpreted in the same way, as the Supreme Court has now done, in regard to the appointment of judges of the High Courts and the judes of the Supreme Court, which means that the ultimate appointer is not the Executive but the Supreme Court Judges and the High Court Judges? If that is so, if they are appointed in consultation with the Chief Justice of India... *(Interruptions)*

MR. CHAIRMAN: Please conclude.

SHRI MADAN BHATIA: Then, will this not also involve the highest judiciary of the land in the political arena? That is all.

SHRI H. R. BHARDWAJ : Sir, I fully agree with the hon. Member in so far as his views about the independence of this institution are concerned. We have assured it on many occasions that we want the Election Commission to be completely independent of all the influences. That is why we wanted to give the same type of protection to the other two Members who were appointed. In fact, this was not for denigrating any other person. It was to ensure their independence. If they are given the same protection so that they cannot be removed except by way of impeachment, that does not harm anybody. It rather safeguards the interests and independence of the other two Members. So, any controversy that was raised, was baseless.

So far as the question of appointment is concerned, my own view is that this appointment is not a judicial appointment. Under the scheme of the Constitution, it is an appointment made by the Executive and the President of India alone should be competent to appoint him and that status should continue. But, the Prime Minister was very kind to instruct me that we must accommodate the entire Opposition and bring about a consensus even if we have to accommodate them out of the way. So, in order to bring about harmony and consensus in our discussions and to remove all these impediments and doubts, we said: "Okay, we can accept that the Government would share the question of appointment with the authority which is acceptable to all of us. The President ultimately appoints even the Chief Justice of India and the other judges of the High Court. It is a very high office. They should have no objection to it. A suggestion came from one of the national political parties that if the Government could agree that this would be done in consultation with the Chief Justice of India, then they would be able to support this measure. I had immediately got clearance from the Cabinet and the Prime Minister and accommodated their views. But, on the next day, that view did not satisfy them. They said: "No, we would like to associate two more judges. My colleague, Shri Madan Bhatia, a Senior Advocate, knows that this is the recent decision of nine Judges that in appointments they have to consult their next two senior Judges. I know the intention, that the Opposition is interested to pass on this appointment even to the judiciary. That is not permissible under the Constitution. It is an appointment to be made by the President of India and we would only agree to have consultations with anybody either the Presiding Officer or the Chief Justice of India. We were prepared to be it, but even on our assurance on this, on our acceptance of this they did not agree Therefore, all this which was done to uphold the independence of an institution, was opposed. So, this is the present-day situation and I want to emphasise again that it is a very important institution and all parties should agree that they should be better cared for, that they should be better paid. That is why we give them equal salary. They should be respected. that is why we select the best talented, high-level officers. They should be independent. Therefore, we ensure in the Constitutional amendment that they can only be removed by impeachment, not by a Government executive order. So, all this was done with a sincere desire, but it was interpreted politically, absolutely in a reverse direction.

SHRI S. MADHAVAN: Sir, the Election Commisison is a Constitutional authority, but now it seems that the Chief Election Commissioner is waging a war against the Central Goevrnment, the State Governments and the Members of Parliament. I would like to know whether the Government is aware that this Chief Election Commissioner has circulated the copies of the communication he had sent to the Prime Minister, telling the M.Ps. "No action has been taken by the Prime Minister, the Government of India, on the suggestions given by the Chief Election Commissioner for electoral reforms.' That means, the Government is not ready to accept his suggestions to bring about reform in the electoral procedure. What

is the truth? Is he a Constitutional authority or is he waging a war against the Members of Parliament, against the Prime Minister, that he is circulating to the Members of Parliament a letter he had sent to the Prime Minister?

SHRI H. R. BHARDWAJ: Sir, this is not true that there is any warlike situation. It is a very peaceful Government... (*Interruptions*).

SHRI G. SWAMINATHAN: The Government is very peaceful but the Chief Election Commissioner is not peaceful.

THE PRIME MINISTER (SHRI P. V. NARASIMHA RAO): Mr. Chairman, it is better not to comment on these matters. We have to find solutions to these problems when they arise. This is a question of interpreting the Constitution. The Chief Election Commissioner interprets it in one way, we interpret another way. There must be some methods of coming to some consensus on this. We are trying this. I would request hon. Members not to take it up at this stage.

*2 8. [The Questioner (Shri Ashok Mitra) was absent. For answer vide col. .....infra.]

Offers of Companies other than HAL for the Modernisation Project of Penicillin

*209. SHRI CHIMANBHAI MEHTA:
SHRI ANANTRAY DEVSHANKER DAVE:

Will the Minister of CHEMICALS AND FERTILIZERS be pleased to state:

(a) whether Government's attention has been drawn to the news-item published in the Indian Express dated 7th July, 1994 under the caption "HAL tie-up plan with Max-GB in rough weather";

(b) if so, what is Government's reaction thereto;

(c) whether it is a fact that the modernisation project for Penicillin G is being negotiated with Max-GB exclusively, ignoring open tendering norms;

(d) if so, the reasons therefor;

(e) the details of other bidders for modernisation project whose offers have not been considered, though technologically and financially more beneficial for HAL; and

(f) the details of all the offers received by HAL and the Ministry for the Modernisation of the plant?

THE MINISTER OF CHEMICALS AND FERTILIZERS (SHRI RAM LAKHAN SINGH YADAV): (a) to (f) A Statement is laid on the Table of the House.

Statement

(a) Yes, Sir. .. ...

(b) to (f) A Memorandum of Understanding (MOU) has been entered into between Hindustan Antibiotics Limited (HAL) and MAX-GB for technology upgradation in the existing Penicillin plant of HAL through a joint venture collaboration. The Joint Venture is subject to approval of the Government which has not yet been given. The matter relating to the proposed joint venture between HAL and MAX-GB is now before the Hon'ble High Court of Delhi at New Delhi through Writ Petitions No. CW 3162/94, 3161/94 and 3181/94. The Show Cause Notices for these Writ Petitions have been received by this Ministry only on the 5th August, 1994. The Union of India is the first respondent in the said three Writ Petitions, the other respondents being HAL, MAX-GB and Managing Director, HAL.

श्री राम लखन सिंह यादव : उत्तर सभा पटल पर रखा गया है लेकिन इसके बाद मैं आपका ध्यान राज्य सभा रूल्ज आफ प्रोसिजर एंड कंडक्ट आफ बिजनेस, पेज–17, पर धारा 47(2) XIX की ओर दिलाना चाहता हूं जिसमें कहा गया है–

"It shall not ask for information on a matter which is under adjudication by a court of law having jurisdiction in any part of India."

इसके साथ साथ मैं आपका ध्यान... (व्यवधान)